



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, O, FF

Introduction

In the first application, the tenant seeks to recover a \$252.50 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "Act").

In the second application the landlord seeks to recover May 2015 rental income of \$535.00 and an agent's fee of \$80.00.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord is legally entitled to the May rent or an agent's fee or that the tenant is entitled to recover double the deposit money?

Background and Evidence

The rental unit is a bedroom in a four bedroom lower portion of a house. The tenant shared kitchen and bathroom facilities with other tenants to whom the landlord had rented out bedrooms.

The tenancy started April 11, 2015. There is a written tenancy agreement, signed April 14, 2015. The monthly rent was \$535.00, due on the first. The tenant paid a portion of rent for the remainder of April. The tenancy was for a term ending November 30 2015. The landlord holds a \$252.50 security deposit.

The tenant testifies that he had to leave at the end of April because the window in his bedroom would not close and the heat to the bedroom was erratic. He says it was too cold to reasonably inhabit the room. He says the landlord was informed of the problems on more than one occasion and tried unsuccessfully to fix the heat but not the window.

It is agreed that on April 30^h the parties met at the premises and the tenant returned the key and verbally gave the landlord his forwarding address, which the landlord wrote down.

The landlord says that the tenant never mentioned any problem with a window or heat. He says the premises are only five or six years old and there should be no window problem. He says there has never been a problem with the heat and that no other tenant has complained. He says another tenant has moved into the same accommodation and there have been no complaints.

The landlord says that the tenant told him on April 30 that he had not received expected money and could not pay the May rent.

Analysis

On the competing testimony, the tenant has not established that there was a significant problem with the window or the heat. The tenant had the landlord's email address but there is no evidence of any correspondence regarding either problem. Lack of such communication is a significant factor in declining to accept the tenant's version over that of the landlord.

The tenant was not entitled to unilaterally end this fixed term tenancy before its end on November 30. That is the essence of a fixed term tenancy.

The landlord was able to re-rent the premises later in May and receive rent for that period. In my view the tenant was contractually obliged to pay May rent in full on May 1st and so the landlord is entitled to recover the full \$535.00 amount of May rent. It was a debt due in full on that date and the fact that the landlord later received other moneys for May rent cannot serve to diminish that debt. This circumstance is a question of debt not damages and so the issue of mitigation is not relevant.

Section 38 of the *Act* requires a landlord to either repay deposit money or make application to keep it within the later of a) the end of the tenancy, and b) receipt of the tenant's forwarding address in writing.

I find that this tenancy ended April 30th when the tenant repudiated the tenancy and returned the key.

I find that the tenant did not provide the landlord with his forwarding address in writing on April 30. He gave the address verbally. The fact that the landlord wrote it down does not suffice. A tenant is obliged and a landlord is entitled to receive the writing from the tenant so that there can be no dispute about the accuracy of the address being provided and to serve as proof in the event of a dispute.

As a result, the landlord did not receive the tenant's forwarding address in writing until the tenant served his application, made May 22, 2015. The landlord made his application within fifteen days after that and so the deposit doubling provision in s. 38 of the *Act* is not applicable.

I dismiss the tenant's claim for a doubling of the deposit.

The landlord has claimed entitlement under the tenancy agreement to unilaterally apply the deposit money against outstanding rent. A landlord unilaterally determining an amount of money claimed to be owed and unilaterally deducting it from deposit money is contrary to s. 38(4) of the *Act*, which permits a landlord to keep from a deposit an amount a tenant agrees to in writing at the end of the tenancy. Section 5 of the *Act* prohibits parties from contracting out of the provisions of the *Act*. The term relied upon by the landlord is therefore void as being contrary to the *Act*.

I dismiss the landlord's claim for recovery of an agent fee. An arbitrator's power regarding fees and disbursements incurred in filing and handling disputes is limited to awarding recovery of the filing fee.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to a monetary award of \$535.00 plus recover of the \$50.00 filing fee. I authorize the landlord to retain the \$252.50 security deposit in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$332.50.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 29, 2015

Residential Tenancy Branch

